

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JESSE J. PERHAM, deceased</b>	)	
	)	
and	)	
	)	
<b>GUY R. GORDON, deceased</b>	)	
	)	
and	)	
	)	
<b>TAD PERHAM, deceased</b>	)	
Claimants	)	
VS.	)	
	)	Docket Nos. 253,929;
	)	253,932; 253,938
<b>PDS TECHNICAL SERVICES, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>LIBERTY MUTUAL INSURANCE CO.,</b>	)	
Insurance Carrier	)	

**ORDER**

Claimants appealed the July 16, 2001 Award entered by Administrative Law Judge Bruce E. Moore. Oral argument was presented to the Appeals Board on February 13, 2002.

**Appearances**

Claimants appeared by their attorney, Alexander B. Mitchell, II of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Anton Anderson of Kansas City, Kansas.

**Record and Stipulations**

The Appeals Board considered the record and adopts stipulations set forth in the Award.

### Issues

This claim results from a tragic plane crash that killed three of respondent's employees. The decedents were traveling from their temporary residences in Denver, Colorado to Wichita, Kansas, apparently to spend the weekend with their families. Judge Moore applied the "going and coming" rule contained in K.S.A. 44-508(f) to deny these claims. Claimants contend that this travel was expected and, therefore, these claims are compensable under the "inherent travel" exception to the going and coming rule where travel is an integral part of the job, or because the travel was for the mutual benefit of the employer and the employees. Whether decedents' deaths were caused by an accident that arose out of and in the course of their employment with respondent is the only issue for Appeals Board review.

### Findings of Fact and Conclusions of Law

Having reviewed the entire record, the Appeals Board finds the Award of the ALJ should be affirmed. The Appeals Board agrees with the ALJ's analysis of the evidence as set forth in the Award. In particular, the Board agrees that the purpose of the trip from Denver, Colorado to Wichita, Kansas was personal. The trip had no special business purpose, and was not for the mutual benefit of the employer and the deceased employees.

When respondent temporarily placed the decedents at a work site in another state, they were expected to find temporary lodging near that work site. The decedents were not expected to permanently relocate to the new work site because the job at that location was temporary. Accordingly, it was foreseeable, even expected, that the decedents would occasionally travel to visit their families. However, foreseeability is not the test for the compensability of such travel. There is no such exception to the going and coming rule and, following the recent holding by the Kansas Court of Appeals in Butera v. Fluor Daniel Const. Corp., 28 Kan. App.2d 542, 18 P.3d 278, *rev. denied* \_\_\_\_ Kan. \_\_\_\_ (2001), the Appeals Board finds that travel was not intrinsic to the decedents' profession, nor an integral or necessary part of the decedents' jobs with respondent.

### AWARD

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore dated July 16, 2001, should be, and is hereby, affirmed in all respects and benefits are denied.

JESSE J. PERHAM  
GUY R. GORDON  
TAD W. PERHAM

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Docket Nos. 253,929;  
253,932;  
253,938

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ date of February, 2002.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Alexander Mitchell II, Attorney for Claimants  
Anton Anderson, Attorney for Respondent  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director